

THE HONORABLE _____

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

GREY GHOST PRECISION, LLC, a
Washington Limited Liability Company,

Plaintiff,

v.

GHOST, INC., a Florida Corporation;
and DOES 1-5,

Defendants.

Case No. 2:17-cv-1384

COMPLAINT

1 Plaintiff GREY GHOST PRECISION, LLC, (“Plaintiff” or “Grey Ghost”)
2 alleges as follows:

3 INTRODUCTION

4 1. Plaintiff Grey Ghost seeks declaratory judgment of non-infringement of
5 alleged trademark rights asserted against Plaintiff by Defendant Ghost, Inc.
6 (“Ghost” or “Defendant”). Plaintiff further seeks declaratory judgment that the
7 alleged trademark rights asserted by Defendant are invalid and unenforceable.

8 2. Defendant has initiated a Petition for Cancellation of Plaintiff’s GREY
9 GHOST PRECISION trademark registration and has asserted that Plaintiff is
10 infringing on Defendant’s alleged trademarks by manufacturing and selling rifles
11 using the mark at issue. Plaintiff denies that it has infringed any trademarks owned
12 by Defendant. Plaintiff further asserts that Defendant’s alleged trademarks are
13 invalid due to fraud and abandonment.

14 PARTIES

15 3. Plaintiff Grey Ghost is a limited liability company organized and existing
16 under the laws of the State of Washington, with its principal place of business
17 located in Lakewood, Washington.

18 4. Defendant is a corporation organized and existing under the laws of the
19 State of Florida, with its principal place of business located in Miami, Florida.

20 JURISDICTION AND VENUE

21 5. This is an action for declaratory judgment arising under (i) the
22 Trademark Laws of the United States, 15 USC § 1051 et seq. (the “Trademark
23 Act”); (ii) 15 U.S.C. §1125, et seq. (the “Lanham Act”); and (iii) 28 U.S.C. §§
24 2201 and 2202 (the Declaratory Judgment Act). Thus, this Court has original
25 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331
26 and 1338.

27 6. Defendant is also subject to the personal jurisdiction of this court
28 because it sells the products at issue in western Washington state and therefore has

1 sufficient minimum contacts to subject it to personal jurisdiction in the Western
2 District. In addition, its false assertions of infringement of alleged trademarks were
3 directed to the Plaintiff in the State of Washington.

4 7. Venue of this action is proper in the Western District of Washington
5 under 28 U.S.C. § 1391(b)(1) and (2) because Defendant is subject to the personal
6 jurisdiction of this Court in this Judicial District and thus qualifies as a resident of
7 this Judicial District under 28 U.S.C. § 1391(c)(2). In addition, a substantial part of
8 the events giving rise to Plaintiff's claims has occurred and will continue to occur in
9 the Western District of Washington.

10 **FACTS**

11 8. Grey Ghost is a manufacturer and seller of rifles and accessories. Its
12 products include rifles, "uppers," "lowers," and "slides." It markets and sells its
13 products through its website <http://www.greyghostprecision.com/>, and several
14 brick-and-mortar locations.

15 9. Grey Ghost began using the mark Grey Ghost Precision commercially
16 on or before February 17, 2014. Since then, Grey Ghost has consistently used this
17 mark in marketing its products.

18 10. Grey Ghost applied for Trademark protection on July 19, 2014, and
19 obtained Trademark Registration Number 4703186 on March 17, 2015.

20 11. At no time did Plaintiff know of, or attempt to benefit from the
21 reputation of any of Defendant's marks.

22 12. Defendant's products include component parts for guns, holsters,
23 firearm sights, and gun parts. It markets and sells its products through online retail
24 stores and wholesale distributorships. Defendant does not manufacture or sell rifles
25 or parts of rifles, uppers, or slides.

26 13. Defendant is the Registrant/Applicant of various marks including the
27 word "ghost" that it uses on the firearms parts and accessories it markets and sells.

28 14. None of Defendant's registered marks are for rifles or companies that

1 manufacture or sell rifles.

2 15. None of Defendant's marks include the words "grey" or "precision,"
3 in any order.

4 16. The only commonality between Plaintiff's mark and Defendant's marks
5 is the word "ghost."

6 17. Plaintiff is informed and believes that Defendant's marks are not widely
7 recognized by the consuming public as an indication of origin of Defendant's
8 goods.

9 18. The use of the word "ghost" is not uncommon in the firearms industry.
10 For example, the term "ghost gun" refers to an untraceable firearm without a serial
11 number. See https://en.wikipedia.org/wiki/Ghost_gun. It is used by police, gun
12 control advocates, gun rights advocates, and others. See, e.g.,
13 <https://www.wired.com/2015/06/i-made-an-untraceable-ar-15-ghost-gun/>;
14 [http://abc7news.com/news/walnut-creek-police-say-ghost-gun-used-in-murder-](http://abc7news.com/news/walnut-creek-police-say-ghost-gun-used-in-murder-suicide/903250/)
15 [suicide/903250/](http://www.sfgate.com/bayarea/article/Cops-Walnut-Creek-murder-suicide-suspect-used-6424702.php); [http://www.sfgate.com/bayarea/article/Cops-Walnut-Creek-](http://www.sfgate.com/bayarea/article/Cops-Walnut-Creek-murder-suicide-suspect-used-6424702.php)
16 [murder-suicide-suspect-used-6424702.php](http://channel.nationalgeographic.com/underworld-inc/episodes/ghost-guns/); and
17 <http://channel.nationalgeographic.com/underworld-inc/episodes/ghost-guns/>.

18 19. The term "ghost" is used in connection with at least one military
19 tactical shooter video game series, "Tom Clancy's Ghost Recon." See, e.g.,
20 [http://ghostrecon.wikia.com/wiki/Tom_Clancy%27s_Ghost_Recon_\(Game\)](http://ghostrecon.wikia.com/wiki/Tom_Clancy%27s_Ghost_Recon_(Game)).
21 Notably, Plaintiff builds the gear that is used as models by the makers of this game.

22 20. The term "ghost" is also used in products that facilitate the conversion
23 of a firearm into a "ghost gun," such as lower receivers or receiver kits. See, e.g.
24 <https://ghostgunner.net/market>; [https://aeroprecisionusa.com/ar15-stripped-](https://aeroprecisionusa.com/ar15-stripped-lower-ghost.html)
25 [lower-ghost.html](https://gun.deals/category/gun-parts?caliber=1586); <https://gun.deals/category/gun-parts?caliber=1586>.

26 21. Furthermore, the term "ghost" is used by various other companies
27 manufacturing and selling kits, accessories, and parts related to firearms. See, e.g.,
28 Ghost Rifles, <https://www.ghostrifles.com/>; and Ghost Guns,

1 <https://www.ghostguns.com/>.

2 22. Plaintiff is informed and believes that there have been no incidents of
3 actual confusion between Plaintiff's and Defendant's marks.

4 23. Plaintiff is informed and believe that customers in the firearms industry
5 exercise a great deal of brand-specific discernment when purchasing firearms and
6 accessories.

7 24. Plaintiff Grey Ghost also has a well-known name in the U.S.
8 Department of Defense Community and is a registered DOD contractor providing
9 its weapons systems to various specialized units within the DOD and several other
10 Governmental Agencies.

11 25. Despite the common use of the term "ghost" in firearms-related
12 parlance, on or about August 4, 2017, Defendant filed a Petition for Cancellation
13 with the USPTO, seeking to cancel Plaintiff's mark GREY GHOST PRECISION,
14 Registration No. 4703186.

15 26. On or about August 10, 2017, Plaintiff received a notice of Cancellation
16 No. 92066636 from the USPTO.

17 27. Defendants' Petition for Cancellation cites the following marks as Basis
18 for Cancellation:

- 19 a. GHOST INC. Reg. No. 3605662. Registered in class 13 for
20 "Holsters" and class 35 for "On-line retail store services featuring
21 firearms accessories; Wholesale distributorships featuring firearms
22 accessories". Purported date of first use December 15, 1999
- 23 b. GHOST. Reg. No. 4601615. Registered in class 13 for
24 "Component parts for guns". Purported date of first use January 1,
25 2000.
- 26 c. GHOST LIFE. Reg. No. 4601616. Registered in class 13 for
27 "Component parts for guns". Purported date of first use January 1,
28 2010.

- 1 d. GHOST ULTIMATE. Reg. No. 4609087. Registered in class 13
2 for “Component parts for guns”. Purported date of first use March
3 12, 2002.
- 4 e. GHOST WING. Reg. No. 4890327. Registered in class 13 for
5 “Component parts for guns”. Purported date of first use October
6 5, 2015.
- 7 f. GHOST RIDER. Reg. No. 4601617. Registered in class 13 for
8 “Component parts for guns”. Purported date of first use January 1,
9 2013.
- 10 g. GHOST ROCKET. Reg. No. 4428314. Registered in class 13 for
11 “Component parts for guns”. Purported date of first use August 1,
12 2000.
- 13 h. GHOST MAKER. Reg. No. 4189237. Registered in class 13 for
14 “Firearm sights; Gun parts”. Purported date of first use August 1,
15 2010.
- 16 i. GHOST INC & DESIGN. Ser. No. 87386390. Pending application
17 in class 13 for “Component parts for guns; Holsters”. Purported
18 date of first use January 1, 2017.
- 19 j. GHOST BULLET. Ser. No. 86922657. Pending application in
20 class 13 for “Component parts for guns”. Purported date of first
21 use February 1, 2015.
- 22 k. GHOST EVO ELITE. Ser. No. 86604004. Pending application in
23 class 13 for “Component parts for guns”. Purported date of first
24 use January 1, 2012.

25 28. Plaintiff received no notice or correspondence from Defendants prior to
26 the filing of the Petition for Cancellation.

27 29. Plaintiff is informed and believes that Defendant’s earliest registered
28 mark, Registration No. 3605662, dated April 14, 2009, was not used commercially

1 as represented by Defendants in 1999, but rather, much more recently.

2 30. Plaintiff is informed and believes that Defendant misrepresented the
3 “first use” dates in multiple applications to the USPTO.

4 31. Plaintiff is informed and believes that Defendant has abandoned
5 multiple marks it has registered with the USPTO

6 **FIRST CAUSE OF ACTION**

7 **(Declaration that there is no likelihood of confusion that would preclude**
8 **Plaintiff’s Registration and that Plaintiff has not infringed Defendant’s**
9 **marks.)**

10 32. Plaintiff re-alleges and incorporates by reference the allegations set forth
11 above.

12 33. This is a declaratory judgment action under the Trademark Laws of the
13 United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq. and
14 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff and
15 Defendant have significant and immediate adverse legal interests. Defendant has
16 filed a cancellation action with the USPTO seeking to cancel Plaintiff’s mark
17 GREY GHOST PRECISION. There is an actual, substantial, and continuing
18 justiciable controversy between Plaintiff and Defendant regarding whether
19 Plaintiff’s mark GREY GHOST PRECISION violates any of Defendant’s allegedly
20 valid marks.

21 34. As set forth in detail above, there is no likelihood of confusion between
22 Plaintiff’s and Defendant’s marks and Plaintiff is not infringing any of Defendant’s
23 marks.

24 35. Plaintiff is entitled to declaratory judgment that there is no likelihood of
25 confusion between Plaintiff’s use of the mark GREY GHOST PRECISION and
26 Defendant’s marks that would preclude Plaintiff’s registration of the mark GREY
27 GHOST PRECISION.
28

1 36. Plaintiff is further entitled to declaratory judgment that it is not
2 infringing, has not infringed, and is not liable for infringing any allegedly
3 enforceable trademark rights owned by Defendant relating to Plaintiff's use of the
4 mark GREY GHOST PRECISION, either directly or by inducing others to infringe
5 or by contributing to infringement by others.

6 **SECOND CAUSE OF ACTION**
7 **(Declaration of Noninfringement due to Abandonment)**

8 37. Plaintiff re-alleges and incorporates by reference the allegations set forth
9 above.

10 38. The mark GHOST has become generic in the firearms industry. As
11 such, the following alleged trademarks have been abandoned:

- 12 a. GHOST INC. Reg. No. 3605662. Registered in class 13 for
13 "Holsters" and class 35 for "On-line retail store services featuring
14 firearms accessories; Wholesale distributorships featuring firearms
15 accessories". Purported date of first use December 15, 1999.
16 b. GHOST. Reg. No. 4601615. Registered in class 13 for
17 "Component parts for guns". Purported date of first use January 1,
18 2000.

19 39. In connection with the following alleged trademarks that Defendant
20 claims require cancellation of Plaintiff's trademark registration, Defendant has not
21 used the marks for three consecutive years:

- 22 a. GHOST WING. Reg. No. 4890327. Registered in class 13 for
23 "Component parts for guns". Purported date of first use October
24 5, 2015.
25 b. GHOST RIDER. Reg. No. 4601617. Registered in class 13 for
26 "Component parts for guns". Purported date of first use January 1,
27 2013.
28 c. GHOST ROCKET. Reg. No. 4428314. Registered in class 13 for

1 “Component parts for guns”. Purported date of first use August 1,
2 2000.

3 40. Accordingly, Plaintiff is entitled to declaratory judgment that it is not
4 infringing, has not infringed, and is not liable for infringing any allegedly
5 enforceable trademark rights owned by Defendant relating to Plaintiff’s use of the
6 mark GREY GHOST PRECISION, because the alleged trademarks have been
7 abandoned by nonuse and/or the marks becoming generic.

8 **THIRD CAUSE OF ACTION**
9 **(Declaration of Unenforceability of Trademark – Word Marks)**

10 41. Plaintiff re-alleges and incorporates by reference the allegations set forth
11 above.

12 42. This is a declaratory judgment action under the Trademark Laws of the
13 United States, 15 USC § 1051 et seq., the Lanham Act, 15 U.S.C. §1125, et seq. and
14 the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Plaintiff and
15 Defendant have significant and immediate adverse legal interests. Defendant has
16 filed a cancellation action with the USPTO seeking to cancel Plaintiff’s mark
17 GREY GHOST PRECISION. There is an actual, substantial, and continuing
18 justiciable controversy between Plaintiff and Defendant regarding whether
19 Plaintiff’s mark GREY GHOST PRECISION violates any of Defendant’s allegedly
20 valid marks.

21 43. Plaintiff requests an order declaring that the Defendant’s alleged
22 trademarks lack the requisite legal requirements to be protectable on the Principal
23 Register and to be enforceable.

24 **FOURTH CAUSE OF ACTION**
25 **(Declaration Unenforceability of Trademark – Fraud on the USPTO)**

26 44. Plaintiff re-alleges and incorporates by reference the allegations set forth
27 above.

28 45. Defendant filed eleven applications for Trademark registration with

1 the USPTO:

- 2 a. GHOST INC. Reg. No. 3605662. Registered in class 13 for
3 “Holsters” and class 35 for “On-line retail store services featuring
4 firearms accessories; Wholesale distributorships featuring firearms
5 accessories”. Purported date of first use December 15, 1999.
- 6 b. GHOST. Reg. No. 4601615. Registered in class 13 for
7 “Component parts for guns”. Purported date of first use January 1,
8 2000.
- 9 c. GHOST LIFE. Reg. No. 4601616. Registered in class 13 for
10 “Component parts for guns”. Purported date of first use January 1,
11 2010.
- 12 d. GHOST ULTIMATE. Reg. No. 4609087. Registered in class 13
13 for “Component parts for guns”. Purported date of first use March
14 12, 2002.
- 15 e. GHOST WING. Reg. No. 4890327. Registered in class 13 for
16 “Component parts for guns”. Purported date of first use October
17 5, 2015.
- 18 f. GHOST RIDER. Reg. No. 4601617. Registered in class 13 for
19 “Component parts for guns”. Purported date of first use January 1,
20 2013.
- 21 g. GHOST ROCKET. Reg. No. 4428314. Registered in class 13 for
22 “Component parts for guns”. Purported date of first use August 1,
23 2000.
- 24 h. GHOST MAKER. Reg. No. 4189237. Registered in class 13 for
25 “Firearm sights; Gun parts”. Purported date of first use August 1,
26 2010.
- 27 i. GHOST INC & DESIGN. Ser. No. 87386390. Pending application
28 in class 13 for “Component parts for guns; Holsters”. Purported

1 date of first use January 1, 2017.

2 j. GHOST BULLET. Ser. No. 86922657. Pending application in
3 class 13 for “Component parts for guns”. Purported date of first
4 use February 1, 2015.

5 k. GHOST EVO ELITE. Ser. No. 86604004. Pending application in
6 class 13 for “Component parts for guns”. Purported date of first
7 use January 1, 2012.

8 46. In connection with each of the applications for the above-listed
9 trademark registrations, Defendant knowingly made false, material representations
10 on fact regarding the purported “date of first use.”

11 47. Defendant thereby fraudulently obtained the listed trademark
12 registrations in violation of the Lanham Act.

13 48. Accordingly, Plaintiff is entitled to a declaration that Defendant’s marks
14 are invalid for fraud on the USPTO.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief as follows:

17 1. An order declaring that there is no likelihood of confusion between
18 Plaintiff’s mark GREY GHOST PRECISION and Defendant’s marks that would
19 preclude Plaintiff’s registration of the mark GREY GHOST PRECISION.

20 2. An order declaring that Plaintiff is not infringing, has not infringed, and
21 is not liable for infringing any allegedly enforceable trademark rights owned by
22 Defendant relating to Plaintiff’s use of the mark GREY GHOST PRECISION,
23 either directly or by inducing others to infringe or by contributing to infringement
24 by others.

25 3. An order declaring that Plaintiff is not infringing, has not infringed, and
26 is not liable for infringing any allegedly enforceable trademark rights owned by
27 Defendant relating to Plaintiff’s use of the mark GREY GHOST PRECISION,
28 because the alleged trademarks have been abandoned by nonuse and/or the marks

1 becoming generic.

2 4. An order declaring that Defendant's alleged trademarks lack the
3 requisite legal requirements to be protectable on the Principal Register and to be
4 enforceable.

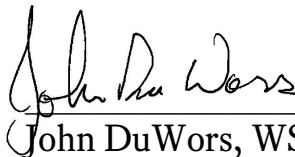
5 5. An order declaring that Defendant's marks are invalid for fraud on the
6 USPTO.

7 6. For an award of attorney's fees and other costs of suit as provided by
8 statute, contract or equity.

9 7. For such other and further relief as the Court deems just and equitable.

10
11 Respectfully submitted September 14, 2017.

12
13 **Newman Du Wors LLP**

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